97TH CONGRESS 2d Session } SENATE { EXECUTIVE REPT. No. 97-52

NOMINATION OF MAX L. FRIEDERSDORF

MARCH 15 (legislative day, FEBRUARY 22), 1982.—Ordered to be printed

Mr. PERCY, from the Committee on Foreign Relations, submitted the following

REPORT

together with

MINORITY VIEWS

The Committee on Foreign Relations, to which was referred the nomination of Max L. Friedersdorf to be a Consular Officer and Secretary in the Diplomatic Service of the United States, having considered the same, reports favorably thereon and recommends that the nomination be confirmed.

COMMITTEE ACTION

The nomination of Max L. Friedersdorf to be a Consular Officer and Secretary in the Diplomatic Service of the United States was submitted to the Senate on March 8, 1982 and referred to the Committee on Foreign Relations that same day.

At its meeting of March 9, the Committee voted 12–1 to report the nomination favorably to the Senate. Voting in favor of the nomination were Senators Percy, Baker, Helms, Hayakawa, Lugar, Kassebaum, Boschwitz, Pressler, Sarbanes, Zorinsky, Tsongas, and Dodd. Senator Pell voted against the nomination.

COMMITTEE COMMENTS

Max Friedersdorf has earned a well-deserved reputation as an experienced "diplomat" in the conduct of Congressional relations and the development of substantive policies in the Federal government. During the first year of the Reagan Administration, Mr. Friedersdorf, as the President's principal advisor on Congressional Relations, played a substantial role in the Administration's efforts to win approval for its legislative program of action. In the process, Mr. Friedersdorf was praised in the Senate and the House of Representatives for his high professional standards, his ability to work effectively

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with members of both political parties, and his expertise as a communicator of the President's legislative objectives.

Prior to his most recent White House assignment, Mr. Friedersdorf served as a Commissioner of the Federal Election Commission from 1979 until joining the Reagan Administration. In addition, Mr. Friedersdorf served as staff director of the Senate Republican Policy Committee from 1977–1979: Deputy Assistant to the President for Legislative Affairs from 1971–1976; and as Administrative Assistant to U.S. Representative Richard Roudebush of Indiana from 1961–1970. Prior to his government service, Mr. Friedersdorf enjoyed a successful career as a journalist working for the Indianapolis News, Chicago Daily News, and the Louisville Times.

During consideration of the Friedersdorf nomination, some concerns were expressed about the nomination of a non-career member of the Diplomatic Service to a consular position. In response to these concerns, then-Assistant Secretary for Congressional Relations, Richard Fairbanks, wrote to Senator Percy expressing the position of the Department of State that "the appointment of a non-career consul at this time is not in any way inconsistent with the Foreign Service Act of 1980." (The full text of the Fairbanks letters is included as Appendix 3 to this report.) Nevertheless, as was clearly expressed at the March 9 meeting of the Committee, the Members of the Committee emphasized that the Friedersdorf nomination is an exception to the well-established practice of reserving consular appointments for career members of the Diplomatic Service. The Committee believes that the Friedersdorf nomination should not be considered a precedent and that only in rare instances should non-career appointments even be considered for such posts.

Consequently, taking into account the positive position of the Department of State on the Friedersdorf nomination as well as the Committee's views on the appointment of non-career consuls to the Diplomatic Service, the Committee urges the Senate to approve the nomination of Max L. Friedersdorf—a skilled communicator, policy advisor, and manager—to be a Consular Officer and Secretary in the Diplomatic Service.

MINORITY VIEWS OF SENATOR CLAIBORNE PELL

Although I share with my colleagues on the Foreign Relations Committee their high regard for Max L. Friedersdorf, I am deeply concerned that his appointment as Consul-General to Bermuda would set a precedent for political appointees to fill positions traditionally reserved for career members of the Foreign Service. The appointment of non-professionals to such positions would seriously undermine the morale of our Foreign Service and could do considerable harm to the effectiveness of our representation abroad. Because of these concerns, I have voted against Mr. Friedersdorf's appointment as a consular officer in the Diplomatic Service of the United States.

At the outset, I would like to make it clear that my opposition to this appointment is in no sense directed against Mr. Friedersdorf personally. Indeed, I have over the past decade come to know and admire Mr. Friedersdorf and to respect greatly his abilities as a public servant. Mr. Friedersdorf has served as a special assistant to President Nixon on legislative affairs, as an advisor to Presidents Nixon and Ford on trade policy, as a staff director of the Republican Policy Committee, as a Commissioner of the Federal Election Commission, and as President Reagan's chief congressional liaison. In each of these posts Mr. Friedersdorf has faced great challenges, and has served with great distinction. As a Commissioner of the Federal Election Commission his tenure was noteworthy not only because of his ability to rise above narrow partisan politics but also because of his determination to make the relatively new procedures of the federal election laws work. As the White House chief legislative liaison, Mr. Friedersdorf deserves much of the credit for President Reagan's 1981 legislative successes. Few individuals in government have accomplished what Mr. Friedersdorf has accomplished and had he been nominated for any of a range of positions, including the higher ranking post of Ambassador, I would have enthusiastically supported his nomination. However, I consider this appointment inappropriate in terms of Mr. Friedersdorf's qualifications—consular work requires an expertise in areas such as immigration and protection of U.S. citizens which Mr. Friedersdorf does not have—and, more importantly, in terms of opening a whole range of career positions to political appointees.

Speaking on behalf of the professional service, American Foreign Service Association President Charles Whitehouse has forcefully presented the case against this appointment. In a letter to Secretary Haig, Ambassador Whitehouse writes "assigning non-career officers as Consuls-General will have a serious adverse effect on the morale of the Foreign Service . . . what appears to be the blatantly political character of this assignment will be widely criticized by the Foreign Service which will be opposed not only to this particular case but will view it also as the opening wedge for further non-career assignments to other similar posts."

Ambassador Whitehouse also expresses the Association's view that the appointment is contrary to Section 502(b) of the Foreign Service Act of 1980 which states "Positions designated as Foreign Service positions normally shall be filled by the assignment of members of the Service to those positions." While I note that in his reply to Ambassador Whitehouse, Acting Secretary Clark cited the word "normally" in Section 502(b) as evidence Congress intended to allow the Department flexibility, I, as a principal author of the Foreign Service Act, share the Association's view that the very rare exceptions intended by Congress were for senior specialists to the Senior Foreign Service and not for political appointees.

I would also like to comment on the virtually unprecedented nature of this appointment. Since the creation of the Foreign Service in 1924 only two men who were not career Foreign Service Officers have been appointed Consuls-General. Both men, William Howard Taft III and Harris H. Huston, were appointed Consul-General more than twenty years ago and both had considerable experience—at least seven years—in the State Department before receiving the appointment. Two exceptions, both of whom had reasonable qualifications, in fifty-eight years underscores the extent to which the position of Consul-General has been the preserve of the career service.

My opposition to Mr. Friedersdorf is based on the potential damage this blatantly political appointment could have to the integrity of the career Foreign Service. My opposition is in no sense personal. Indeed, I very much regret that the President did not see fit to use Mr. Friedersdorf's exceptional talents in a higher level, but not necessarily career, position, for which he would be eminently qualified. His appointment to the post of Consul-General, however, does set a dangerous precedent for the expansion in the number of Foreign Service jobs which might be filled by non-professionals. Because I believe the effectiveness of our foreign policy depends on the caliber and professionalism of those implementing it, I am reluctantly compelled to oppose this nomination.

APPENDICES

1. Ambassador Charles S. Whitehouse's letter to Secretary Haig protesting the appointment of Max L. Friedersdorf as Consul-General to Bermuda.
2. Acting Secretary Clark's reply to Ambassador Whitehouse.
3. Assistant Secretary Fairbank's letter to Senator Percy citing precedent and statutory authority for appointment of non-career individuals to the post of Consul-General.

AMERICAN FOREIGN SERVICE ASSOCIATION,
Washington, D.C., December 3, 1981.

Hon. ALEXANDER M. HAIG,
The Secretary of State,
Washington, D.C.

DEAR MR. SECRETARY: It has come to the attention of the American Foreign Service Association that the administration is considering assigning Mr. Max Friedersdorf of the White House staff to Bermuda as Consul General.

I believe it is my duty to inform you that assigning non-career officers as Consuls General will have a serious adverse effect on the morale of the Foreign Service and will be vigorously opposed by the Association.

I also believe I am correct in stating that assigning non-career persons as Consuls General may be contrary to the Foreign Service Act of 1980 section 502(b) which states that "Positions designated as Foreign Service positions normally shall be filled by the assignment of members of the Service to those positions." It appears to the Association that this language was intended to prevent the kind of action which the administration is apparently taking. I would also draw your attention to the limited number of appointments in the Senior Foreign Service authorized under Section 305(b) of the Act, and I am assured that this authority was for the appointment of senior specialists and not for the assignment of non-career persons to posts like Bermuda.

In closing I should like to repeat that what appears to be the blatantly political character of this assignment will be widely criticized by the Foreign Service which will be opposed not only to this particular case but will view it also as the opening wedge for further non-career assignments to other similar posts.

Respectfully,

CHARLES S. WHITEHOUSE,
President.

DEPARTMENT OF STATE,
Washington, December 14, 1981.

Hon. CHARLES S. WHITEHOUSE,
President, American Foreign Service Association,
Washington, D.C.

DEAR MR. WHITEHOUSE: The Secretary has asked that I respond to your letter of December 3 conveying the views of the American Foreign Service Association on the appointment of Mr. Max Friedersdorf as Consul General in Bermuda.

I do not believe that the appointment is in any way contrary to the Foreign Service Act of 1980. Inclusion of the term "normally" in Section 502(b) of the Act cited in your letter certainly indicates that the Congress wished to give the leadership of the Department flexibility to permit the occasional appointment to positions generally filled by career members of the Foreign Service of persons who, while qualified in other respects, are not career officers. Appointments of non-career persons as consuls general, while infrequent, have been made in the past. I wish to make clear that this appointment does not constitute a precedent.

I am satisfied that Mr. Friedersdorf, who has had distinguished careers in government and in business, will carry out his new duties with the high competence and intelligence which have characterized his past activities.

I share your concern about the morale of the Foreign Service, and I appreciate the frankness with which you conveyed your position and that of the Association.

Sincerely,

WILLIAM P. CLARK,
Acting Secretary.

DEPARTMENT OF STATE,
Washington, D.C., December 28, 1981.

Hon. CHARLES H. PERCY,
Chairman, Committee on Foreign Relations,
U.S. Senate.

DEAR CHAIRMAN PERCY: Your staff has indicated that Senator Pell has requested background information regarding previous appointments to Consul General positions of persons who were not career Foreign Service. We are happy to provide you with the following information regarding such appointments:

There have been two Consuls General who were not career Foreign Service Officers:

William Howard Taft, III—was first appointed to the State Department as Ambassador to Ireland 1953–57. In 1957 and 1958, he was a GS employee and a member of the Policy Planning Staff. In 1959, he was appointed an FSR–2 and assigned January 10, 1960 as Consul General to Lourenco Marques, Mozambique.

Harris H. Huston—entered the State Department as a GS–16 in 1953. He was subsequently promoted to GS–17 and served as Deputy Administrator and Acting Administrator of the Bureau of Security and Consular Affairs. He was appointed as FSR–1 in October 1961 and assigned as Consul General to Curacau December 24, 1961.

Moreover, I would also like to note that the appointment of a non-career consul at this time is not in any way inconsistent with the Foreign Service Act of 1980. That Act clearly indicates through the phrasing of Section 502(b) that Congress intended to grant the Department flexibility to permit occasional appointment of persons who, while qualified in other respects, are not career officers to positions generally filled by career members of the Foreign Service. Specifically Section 502(b) notes that "positions designated as Foreign Service positions normally shall be filled by the assignment of members of the Service to those positions." It should be noted that under the Foreign Service Act the term "members of the Service" includes non-career appointments in the Senior Foreign Service.

I hope this information will be helpful to you in replying to Senator Pell's questions.

Sincerely,

RICHARD FAIRBANKS,
Assistant Secretary for Congressional Relations.

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